

MINUTES
BOARD OF APPEALS
VILLAGE OF SEA CLIFF
VILLAGE HALL
300 SEA CLIFF AVENUE
SEA CLIFF, NEW YORK 11579

November 19, 2013

Present:	Chair	Dina Epstein
	Members	Kevin McGilloway
		Noel Griffin
		Jamie Weil
	Village Attorney	Brian S. Stolar, Esq.

The meeting was called to order at 8:04 pm.

The Board opened the public hearing on the application of David and Jeanne Rice, 207 Glen Avenue, Sea Cliff to install a generator in a front yard, which requires a variance of Village Code §138-416 to permit such addition. Premises are designated as Section 21, Block 147, Lot 790 on the Nassau County Land and Tax Map. The Board closed the public hearing, and reserved decision.

The Chair recused herself in connection with the application of Marianna Kreatsoulas and Stylious Stylianou and stepped away from the dais. On motion duly made by Mr. Weil, seconded by Mr. Griffin, and adopted unanimously, the Board designated Mr. McGilloway to serve as Acting Chair for the Kreatsoulas/Stylianou application.

The Board opened the public hearing on the application of Marianna Kreatsoulas and Stylious Stylianou, 35 Hawthorne Road, Sea Cliff appealing determinations of the Board of Architectural Review rendered on September 9,

2013 and October 28, 2013 relating to the roof at the premises. Premises are designated as Section 21, Block 31, Lots 28-32 on the Nassau County Land and Tax Map. The Board closed the hearing, and reserved decision.

Ms. Epstein returned to the dais and resumed her position as Chair.

The Board opened the public hearing on the application of Denise and Edward Rieger, 17 Circle Way, Sea Cliff to construct a patio and reconstruct a deck in a front yard, which requires a variance of Village Code §138-516 to permit such accessory structures in a front yard. Premises are designated as Section 21, Block 222, Lot 88 on the Nassau County Land and Tax Map. The Board closed the hearing, and reserved decision.

The Board opened the public hearing on the application of VIP Auto Enterprises, Inc. and Jaytom Realty, 270 Glen Cove Avenue, Sea Cliff to use the premises as an automobile body repair shop to include used car sales, which requires variances of Village Code §§138-901 and 902 in that the proposed use is not permitted. Premises are designated as Section 21, Block 118, Lots 142 and 144 on the Nassau County Land and Tax Map. The Board noted that it had to review the environmental impacts in connection with the application so that it could render a determination of environmental significance before concluding the hearing on the merits of the application. The Board continued the public hearing to December 17, 2013 at 8:00pm.

The Board opened the public hearing on the application of Shuja Qadir, 6 Cliff Way, Sea Cliff, to enclose a porch, reconfigure the residence, and construct a basement area, which requires variances of the following sections of the

Village Code: (a) 138-404 to maintain a lot size of 5,267 square feet, where a minimum of 7,500 square feet is required; (b) 138-408 to construct additional portions of the residence with a 0 front yard setback and maintain the existing 0 foot front yard setback; (c) 138-411 to maintain a westerly side yard setback of 7 feet and an easterly side yard setback of 1.8 feet, where a minimum of 10 feet is required; (d) 138-413.1 to maintain a structure that encroaches into the height/setback ratio planes on the sides and the face of the building; (e) 138-414.1 to permit an increase in the floor area to 1,935 square feet, where a maximum of 1,824 square feet is permitted; and (f) 138-416 to maintain an accessory structure with less the required setback. In addition, the applicant seeks to amend conditions set forth in a decision rendered by the Board on September 22, 1998. Premises are designated as Section 21, Block F, Lot 1949 on the Nassau County Land and Tax Map. The Board closed the hearing, and reserved decision.

The Board discussed the application of Peggy Neice, which was the subject of a previous hearing which the Board closed at its October meeting. On motion duly made by the Chair, seconded by Mr. McGilloway, and adopted three votes in favor and Mr. Weil abstaining, the Board determined that the Neice application is a Type II matter under SEQRA which requires no further environmental review, and determined the application in accordance with the decision annexed hereto.

The Board discussed the Rice application. On motion duly made by Mr. Griffin, seconded by Mr. McGilloway, and adopted unanimously, the Board

determined that the Rice application is a Type II matter under SEQRA which requires no further environmental review, authorized the Chair to execute part 2 of the short environmental assessment form concluding that the proposed action will not result in any significant environmental impact, and granted the application for a variance is granted in accordance with the decision annexed hereto.

The Board discussed the Kreatsoulas application. The Chair did not participate in the discussion. On motion duly made by Mr. McGilloway, seconded by Mr. Weil, and adopted three votes in favor and the Chair not participating in the discussion or the vote, the Board determined that the Kreatsoulas application is a Type II matter under SEQRA which requires no further environmental review, and denied the application in accordance with the decision annexed hereto.

The Board discussed the Rieger application. On motion duly made by Mr. McGilloway, seconded by Mr. Weil, and adopted unanimously, the Board determined that the Rieger application is a Type II matter under SEQRA which requires no further environmental review, authorized the Chair to execute part 2 of the short environmental assessment form concluding that the proposed action will not result in any significant environmental impact, and granted the application for a variance is granted in accordance with the decision annexed hereto.

The Board discussed the environmental significance of the VIP application. After such discussion, on motion duly made by the Chair, seconded by Mr. McGilloway, and adopted unanimously, the Board adopted the following resolution:

WHEREAS, VIP Auto Enterprises, Inc. and Jaytom Realty, 270 Glen Cove Avenue, Sea Cliff, has applied to use the premises as an automobile body repair

shop to include used car sales, which requires variances of Village Code §§138-901 and 902 in that the proposed use is not permitted. The subject property is located at 270 Glen Cove Avenue, Sea Cliff, New York and is designated as Section 21, Block 118, Lots 142 and 144 on the Nassau County Land and Tax Map (the “Premises”); and

WHEREAS, pursuant to the New York State Department of Environmental Conservation (“DEC”) regulations, Part 617 (“Part 617”), the subject application to utilize the Premises is an “Unlisted Action” for which this Board determines itself to be lead agency; and

WHEREAS, pursuant to Part 617 and the New York State Environmental Quality Review Act (“SEQRA”) this Board, as lead agency, is required to make a determination of environmental significance as to whether the action may include the potential for one or more significant adverse environmental impacts; and

WHEREAS, this Board has reviewed the Environmental Assessment Form as prepared by the applicant, and makes the following findings in support of its determination of significance; and

WHEREAS, this Board has considered carefully all of the documents, testimony and statements that presently comprise the record before this Board in this application with respect to the environmental significance of the application; and

WHEREAS, this Board makes the following findings:

1. The applicant seeks to obtain permission to use the premises for use as an automobile body repair shop to include used car sales. Such use would require variances of Village Code §§138-901 and 138-902 in that the proposed repair work with associated car sales is not a permitted use or a use permitted by special permit.
2. The Premises are located in the Village’s Business B District, include a 2 story residence and abut residential properties. The uses proposed are not only not permitted, but were specifically removed as a special permit use by the Village in 1993.
3. To commence the uses proposed, the applicant requires a use variance. The proposed use, which is surrounded partially by residential property, is at odds, and in material conflict, with the objectives and goals as officially adopted in the Village zoning code.
4. The proposed use has the potential to permanently impair the aesthetic nature of the area, and is inimical to the surrounding area, all of which was part of the plan that the Village in 1993 sought to assure would result from the elimination of this type of use from the Village Code as a special permit use.

5. If there is an accident at the premises there could be a release of air contaminants or toxic or hazardous substances or an explosion or fire at the premises. If this were to occur, the proximity of the proposed vehicle repair and storage to a residential community would exacerbate the damage caused by such accident. There is insufficient information at this time to know if said adverse effect is addressed or can be mitigated by the applicant.
6. The storage of vehicles and equipment associated with an automobile repair business, with some vehicles not currently in road operating condition, could result in the leakage of painting fluids or other vehicle fluids at a site that does not appear to have proper facilities to accommodate the loss of such fluids. This could not only impact the surface of the premises, but also may possibly impact the surface or groundwater resources and/or the air quality in the area. These potentially adverse impacts must be explored further.
7. The use of the premises to repair vehicles using a spray paint booth and preparing and cleaning vehicles could result in objectionable odors. This also must be explored further.
8. The applicant was unable to advise the Board about the complete operations at the premises, including whether additional vehicle repair work would be conducted on premises for vehicles not intended to be sold by the applicants.
9. The use of the Premises for vehicle repair likely will result in substantial noise. This must be explored further.
10. The impact of creating a repair business and sale of vehicles with limited parking for customers may create traffic conflicts.
11. The applicant testified that the residential dwelling located in the center of the Premises would create a conflict in uses, traffic and other impacts that must be explored.

NOW, THEREFORE, BE IT RESOLVED that based upon the foregoing findings of fact, this Board has identified one or more potentially large or significant adverse environmental impacts which may occur; and

BE IT FURTHER RESOLVED that the Board hereby makes a positive determination of environmental significance in accordance with SEQRA and Part 617 for the proposed action, and confirms that an Environmental Impact State (the "EIS") will be required; and

BE IT FURTHER RESOLVED that the Board requests that the Village Clerk or Village Attorney duly file and publish Notice of Positive Declaration pursuant to the provisions of Part 617; and

BE IT FURTHER RESOLVED that the Village Attorney complete parts 2 and 3 of the Full Environmental Assessment Form (EAF) in accordance with the

impacts identified herein and that the Chair is authorized to execute the EAF upon submission of the completed EAF; and

BE IT FURTHER RESOLVED that the Board has determined to conduct a public scoping process, and that the applicant will prepare and submit a draft written scope of issues to be addressed in the EIS containing at a minimum the items identified in Part 617.8(f)(1) through (5); and

BE IT FURTHER RESOLVED that such draft written scope shall be filed with the Board no later than January 14, 2014 or the application shall be deemed withdrawn without prejudice, but should the applicants require additional time to submit the draft written scope such request shall be made and submitted in writing to the Board for receipt by the Board no later than January 7, 2014; and

BE IT FURTHER RESOLVED that the Board will schedule a public hearing on said scoping document to be held before this Board at the earliest practicable date upon receipt of said draft scoping document.

The Board discussed the Qadir application. On motion duly made by the Chair, seconded by Mr. McGilloway, and adopted unanimously, the Board determined that the Qadir application is a Type II matter under SEQRA which requires no further environmental review, authorized the Chair to execute part 2 of the short environmental assessment form concluding that the proposed action will not result in any significant environmental impact, and determined the merits of the application for variances in accordance with the decision annexed hereto.

There being no further business, the meeting was adjourned at 10:55 pm.

NEICE SHORT FORM DECISION
(as authorized by Village Code 138-1302.1)

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on November 19, 2013, on motion of the Chair, seconded by Mr. McGilloway, and adopted three votes in favor and Mr. Weil abstaining, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the consideration of this Board and discussed the subject application, rendered the following findings and determination:

1. Peggy Neice, 36 14th Avenue, Sea Cliff applied to construct additions to a residence and convert an existing single family residence to a two family residence to be used as a mother/daughter type residence, which requires variances of the following Village Code sections to maintain existing conditions: (a) 138-404 to maintain a lot size of 4,800 square feet, where a minimum of 7,500 square feet is required; (b) 138-406 to maintain front property lines of 40 feet, where a minimum of 75 feet is required; (c) 138-408 to maintain a setback of 6.7 feet, where the minimum required setback is 20 feet; (d) 138-409 to maintain two lot widths at the front yard setbacks of 40 feet, where the minimum required width is 75 feet; and (e) 138-411 to maintain side yard setbacks of 6.5 and 9 feet, where the minimum required setback is 10 feet. The proposed construction also requires variances of the following Village Code sections: (a) 138-401 and 415 to permit a two family residence where no such use is permitted; (b) 138-411 in that the additions will be located 6.5 feet from the side property line, where a minimum of 10 feet is required; and (c) 138-413.1 in that the additions will encroach further into the existing non-conforming height-setback ratios. Premises are designated as Section 21, Block 134, Lot 1088 on the Nassau County Land and Tax Map.
2. The applicant is the record owner of the subject premises.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.
4. The application was referred to the Nassau County Planning Commission in accordance with the streamlining agreement between the Village and the Planning Commission, and no response was received from the Planning Commission.
5. The relief requested in the application is determined as follows: (i) variances of the following Village Code sections to maintain existing conditions are granted: (a) 138-404 to maintain a lot size of 4,800 square feet, where a minimum of 7,500 square feet is required, (b) 138-406 to maintain front property lines of 40 feet, where a minimum of 75 feet is

- required, (c) 138-408 to maintain a setback of 6.7 feet, where the minimum required setback is 20 feet, (d) 138-409 to maintain two lot widths at the front yard setbacks of 40 feet, where the minimum required width is 75 feet, and (e) 138-411 to maintain side yard setbacks of 6.5 and 9 feet, where the minimum required setback is 10 feet; (ii) variances of the following Village Code provisions to permit the construction of additions to the premises are granted: (a) 138-411 in that the additions will be located 6.5 feet from the side property line, where a minimum of 10 feet is required, and (b) 138-413.1 in that the additions will encroach further into the existing non-conforming height-setback ratios; and (iii) the variance of Village Code §138-401 and 415 to permit a two family residence where no such use is permitted is denied.
6. The variances for the two family residence are use variances. The applicant failed to demonstrate, and submitted no testimony, that would support a finding of unnecessary hardship.
 7. In rendering this decision, the Board makes no determination as to whether any interior construction proposed by the applicant will create a second dwelling unit within the premises, as that determination is subject to review by the building department. Accordingly, this decision does not authorize any interior construction that would permit the residence to be used in a manner that would permit a second dwelling unit within the residence.
 8. The approvals granted herein are conditioned on the work being performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.
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RICE SHORT FORM DECISION
(as authorized by Village Code 138-1302.1)

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on November 19, 2013, on motion of Mr. Griffin, seconded by Mr. McGilloway, and adopted unanimously, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the consideration of this Board and discussed the subject application, rendered the following findings and determination:

1. David and Jeanne Rice, 207 Glen Avenue, Sea Cliff applied to install a generator in a front yard, which requires a variance of Village Code §138-416 to permit such addition. Premises are designated as Section 21, Block 147, Lot 790 on the Nassau County Land and Tax Map.
 2. The applicants are the record owners of the subject premises.
 3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.
 4. The application was referred to the Nassau County Planning Commission in accordance with the streamlining agreement between the Village and the Planning Commission, and no response was received from the Planning Commission.
 5. The relief requested in the application is granted provided that (a) the construction shall conform substantially with the plans submitted with the application, (b) all work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304; and (c) if required by Nassau County, compliance with the provisions of General Municipal Law §239-f and compliance with any conditions imposed by the County relating to the generator.
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ZONING BOARD OF APPEALS
VILLAGE OF SEA CLIFF

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In the Matter of the Application of

**Marianna KREATSOULAS and
Stylious STYLIANOU**

appealing determinations of the
Board of Architectural Review rendered
on September 9, 2013 and October 28,
2013 relating to premises located at
35 Hawthorne Road, Sea Cliff

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STATEMENT

This is an application by Marianna KREATSOULAS and Stylious STYLIANOU, 35 Hawthorne Road, Sea Cliff (the "Premises") seeking to overturn the decisions of the Board of Architectural Review rendered on September 9, 2013 and October 28, 2013 relating to the roof and roof trim at the Premises. On motion duly made by Mr. McGILLWAY, seconded by Mr. WEIL, and adopted three votes in favor and the Chair having recused herself and having not participated in the hearing or the discussion of the application, the Board made the following determination:

RESOLVED, upon consideration of the evidence presented at the public hearing held by the Zoning Board of Appeals (the "Board"), and all proceedings had herein, all documentation submitted to the Board, and following the personal inspection of the subject property by each of the Board members, and after due deliberation, the Board makes the following findings of fact and decision:

FINDINGS OF FACT

1. The Premises is located at 35 Hawthorne Road, Sea Cliff, and is designated as Section 21, Block 31, Lots 28-32 on the Nassau County Land and Tax Map.

2. The applicants obtained approval from the Board of Architectural Review (BAR) to construct modifications to the exterior of the Premises. Despite that approval, the construction did not comply with the plans approved by the BAR. Specifically, a gambrel roof and gable ends did not comply with the plans. Subsequently, applicants sought a modified approval from the BAR to permit a further modification to permit a 1 foot gambrel roof overhang to provide a roof and façade similar to the original approval. The BAR granted the modification, but applicants now appeal that determination and request that the as built condition be permitted to remain.

3. The BAR modified approval permitted a modification to the main gable ends utilizing a 1 foot gambrel roof overhang to the existing façade and a recessed main gable 4 inches from the gambrel detail. This modification was suggested by the applicants.

4. The applicants now request that the Board not abide by the BAR modification and approve the construction in it's as is condition. In support of that contention, applicants contend that the value of the Premises and the neighboring properties would not decrease should the construction be permitted to remain without modification.

5. The Board has reviewed the request in accordance with the standards set forth in Village Code Chapter 38. Village Code §38-2 sets forth the legislative intent of the BAR's purpose, and provides:

The Board of Trustees hereby finds that excessive similarity, dissimilarity, or inappropriateness of design in the exterior appearance of buildings in both residence and business districts, ... in relation to the prevailing appearance of buildings in the vicinity thereof adversely affects the desirability of the immediate areas for residential purposes; that inappropriateness or excessive dissimilarity of design in the exterior appearance of buildings in such residence and business districts in relation to the characteristics of design generally prevailing in the Village discourages the most appropriate use of land throughout the Village and that such excessive similarity, dissimilarity or inappropriateness impairs the benefits of occupancy of existing residential property, impairs the stability and value of both improved and unimproved real property, produces degeneration of both residential and business property, with attendant deterioration of conditions affecting the health, safety and morals of the inhabitants of the Village, and destroys a proper relationship between the taxable value of real property and the cost of municipal services provided therefor. It is the purpose of this chapter to prevent these and other harmful effects and thus to promote and protect the health, safety and general welfare of the community.

6. The standards of such review are contained in section 38-7 and provide that the BAR shall disapprove any application for a building permit referred to it if the BAR finds that the construction for which the permit is sought would, if erected, be so detrimental to the character, property values or development of the surrounding residential or business area or of the Village as a whole as to produce one or more of the harmful effects set forth in Village Code §38-2.

7. Applicants only contention during the hearing was that the monetary values of the neighboring properties would not decrease as a result of the proposed modification to the original plans. This is only one of the considerations in reviewing whether the proposed construction should be approved. Without more the Board cannot conclude reasonably that the BAR determination was in error or that the Board would reach a different conclusion. Moreover, the Board is familiar with the neighborhood and the designs of houses in the neighborhood and the Village and finds that the applicants' proposal to permit the existing condition to remain would be detrimental to the character of the area.

8. Accordingly, the Board denies the appeal.

RIEGER SHORT FORM DECISION
(as authorized by Village Code 138-1302.1)

At a meeting of the Board of Appeals of the Village of Sea Cliff, New York, on November 19, 2013, on motion of Mr. McGilloway, seconded by Mr. Weil, and adopted unanimously, the Board, having duly considered the matters brought forth at the public hearing and other matters properly within the consideration of this Board and discussed the subject application, rendered the following findings and determination:

1. Denise and Edward Rieger, 17 Circle Way, Sea Cliff applied to construct a patio and reconstruct a deck in a front yard, which requires variances of Village Code §138-516 to permit such accessory structures in a front yard. Premises are designated as Section 21, Block 222, Lot 88 on the Nassau County Land and Tax Map.
2. The applicants are the record owners of the subject premises.
3. The requested relief is classified as a Type II action under SEQRA, which requires no environmental review.
4. The application was referred to the Nassau County Planning Commission in accordance with the streamlining agreement between the Village and the Planning Commission, and no response was received from the Planning Commission.
5. The relief requested in the application is granted provided that (a) the construction shall conform substantially with the plans submitted with the application, and (b) all work is performed, and all approvals obtained, within the timeframe provided in Village Code §138-1304.

ONING BOARD OF APPEALS
VILLAGE OF SEA CLIFF

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In the Matter of the Application of

Shuja Qadir

for variances to enclose a porch, reconfigure
a residence and construct a basement
area, and for amendment of conditions
contained in a September 22, 1998
decision of the Board,
relating to premises located at
6 Cliff Way, Sea Cliff

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STATEMENT

This is an application by Shuja Qadir, 6 Cliff Way, Sea Cliff (the “Premises”) to obtain variances to enclose a porch, reconfigure a residence and construct a basement area, and to amend a prior determination made by this Board on September 22, 1998, which decision prohibits the enclosure of the porch. On motion duly made by the Chair, seconded by Mr. McGilloway, and adopted unanimously, the Board made the following determination:

RESOLVED, upon consideration of the evidence presented at the public hearing held by the Zoning Board of Appeals (the “Board”), and all proceedings had herein, all documentation submitted to the Board, and following the personal inspection of the subject property by each of the Board members, and after due deliberation, the Board makes the following findings of fact and decision:

FINDINGS OF FACT

1. The Premises is located at 6 Cliff Way, Sea Cliff, and is designated as Section 21, Block F, Lot 1949 on the Nassau County Land and Tax Map. The Premises is located in the Residence A zoning district.

2. In September 1998, the Zoning Board granted relief to the then owner of the Premises to construct a roof canopy over an existing deck. That deck was located along the westerly side of the building. In granting the request for relief, which included permission for the deck and the canopy to be located 7 feet from the side property line, the Board found that the construction of the roof canopy only is reasonable provided the openness of the deck area is maintained. Among the considerations in reaching this conclusion, the Board noted that the proposed canopy is lower in height than the existing roof. Additionally, the Board's grant contained specific conditions prohibiting any further enclosure of the deck beyond its current condition as such enclosure would detract from the open appearance of the improvement. This prohibition was to be memorialized in a deed restriction. The Village has no record of such deed restriction, and the applicant's title research discloses no such restriction.

3. Thereafter, in 2006, and notwithstanding the 1998 limitations and conditions, in 2006, the Board, without making any reference to the 1998 conditions, and apparently unaware of the existence of either the 1998 decision or any deed restriction reflecting those conditions, granted an application to the then owner of the Premises to "enclose partially" the existing porch with roof over. In addition, in January 2007, the Board granted the then owner's appeal of

a Board of Architectural Review decision relating to the enclosure. Thereafter, the enclosure was constructed and a certificate of occupancy was issued.

4. As the 2006 and 2007 approvals make no reference to the 1998 conditions and contain no rationale to vary those conditions, the 1998 conditions remain in place.

5. Thus, in order to maintain the existing construction and partial enclosure, the applicant requires approval from the Board to amend the 1998 conditions. Additionally, to construct the currently proposed full enclosure and the reconfiguration of the residence and basement area, the applicant requires not only a further amendment of the 1998 decision, but also the variances identified by the building department in connection with the new construction.

6. The applicant testified that the basement was necessary to provide for storage in a home that does not have much storage space and that the enclosure of the deck would provide for additional interior habitable space.

7. The Board finds that the need to retain the remaining openness of the area in front of Cliff Way that sits on the front of a cliff facing the water remains an important factor in rendering a determination on the application. The Board also finds that the existing enclosure has removed some of that openness, but with the current offset of the construction leaving open the front area that the openness is still somewhat intact. For the reasons further discussed herein, the Board determines that the 1998 decision may be amended to permit the existence of the 2006/2007 approved construction, but that further amendment to completely enclose the current partially enclosed structure with a wall along the

front property line would eliminate all openness that exists presently. The Board also determines that the addition of the lower basement area is minimal and does not impact such open area while providing a space for the applicant to add storage space to the residence without having to build a small storage space into the hillside.

8. The requested variances are area variances. In determining whether to grant an area variance, the Board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board is required to consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude the granting of the area variance. In granting a variance, the Board shall grant only the minimum variance that it deems necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

9. With regard to whether the proposed variances would produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, the evidence demonstrates that the proposed variances to construct the new enclosure would create an undesirable change in the neighborhood character and a detriment to nearby properties. As to the basement area and the reconfiguration of the residence (with the exception of the proposed new enclosure), the Board finds that no such undesirable change or detriment would result. And, as to the existing enclosure, the Board also finds that there would be no undesirable change or detriment so long as the existing open portion of the deck remain unenclosed. The creation of a small basement area to accommodate interior storage on the lowest level of the residence will not have any impact on the neighborhood. Unlike the basement, the complete enclosure of the deck with an exterior wall along the front property line has the potential to close an area and add unnecessary bulk to the waterfront area. The Board finds that it is important to retain as much openness as possible given the proximity of the Premises to the waterfront. The existing open porch in the front of the Premises meets this purpose and limits impact on the character of the neighborhood. If the porch were to be enclosed in the manner depicted in the plans, the linear wall created thereby will create a detrimental visual impact to this area.

10. The Board finds that the minimal basement addition will be de minimus, but that if the deck was enclosed completely, then not only would the enclosure be substantial, but when combined with the basement addition, the

impact would be substantial. With the basement addition, and excluding the complete enclosure of the deck area (and accounting for the existing partial enclosure), the floor area will only exceed the floor area requirements (Village Code 138-414.1) by a minimal amount (not more than 5 square feet in excess of the 1,824 square feet permitted).

11. The Board finds that the applicant does not have feasible alternatives to pursue to effectuate the goals of enlarging the interior of the Premises, but that the findings relating to the other factors, including the substantiality and the impact on the neighborhood character, far outweigh that there may not be a feasible alternative.

12. As to whether the proposed variances will have an adverse impact on the physical or environmental conditions in the neighborhood, the Board finds that the existing situation does create an adverse impact on the physical conditions in the neighborhood, but that such impact is minimal. However, that impact would be more substantial if the deck area was enclosed completely. The rationale of the Village's zoning plan is to create conformance with standards relevant to the zoning districts within the Village and the neighborhood within which this house exists. Completely enclosing the deck area would be completely at odds with those requirements. The basement construction would have no such impact.

13. As to the self-created hardship, the Board finds that both the proposed new variances and the amendment of the 1998 decision are self-created. The 1998 decision was on file with the Village and the applicant could have reviewed

that file prior to submitting his request for variances. Notwithstanding this finding, the Board finds that it would grant the variances with respect to the existing partial enclosure and the basement based on its consideration of the other factors as set forth above and the benefit that would inure to the applicant as opposed to the detriment of such partial enclosure on the neighborhood.

14. The relief requested in the application with respect to the full enclosure of the deck area and the additional enclosure is denied. The relief requested in the application with respect to the basement area and the amendment of the 1998 decision to permit the existing enclosure to remain is granted provided that: (a) the construction of the basement area shall conform substantially with the plans submitted with the application (and as modified to eliminate the complete enclosure of the deck area), (b) the deck shall not be any further enclosed beyond its current condition; (c) within 30 days of the filing of this decision with the Village Clerk, applicant shall prepare and execute a document in the nature of a Deed Restriction, in a form approved by the Village Attorney, in proper form for recording, setting forth such terms and conditions of this decision and such other provisions as the Village shall deem necessary to properly effectuate the purpose of this decision; (d) all work permitted by the decision herein, and all approvals obtained, within the timeframe provided in Village Code §138-1304; and (e) if required by Nassau County, compliance with the provisions of General Municipal Law §239-f and compliance with any conditions imposed by the County relating to the approved construction.

15. Thus, the Board grants those portions of the application to maintain the lot size (138-404); construct basement area in the front yard setback (138-408); maintain a westerly side yard setback of 7 feet for the existing enclosure (138-411); maintain the height-setback ratio plane encroachment (138-413.1) permit an increase in floor area for the basement addition only (138-414.1); and maintain an existing accessory structure in a setback area (138-416). In addition, the Board grants the request for an amendment of the September 1998 conditions to permit the existing partial enclosure to remain. The remainder of the application, including any further amendment of the 1998 conditions and any variances required to further enclose the deck area, is denied.
